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Measures to eliminate international terrorism

Measures to eliminate international terrorism

Report of the Working Group

Chairman: Mr. Rohan **Perera** (Sri Lanka)

Contents

		Paragraphs	*Page*
I.	Introduction	1–5	2
II.	Proceedings of the Working Group	6–9	2
Annex			
	Informal summaries by the Chairman of the Working Group of the results of the informal consultations on the draft comprehensive convention and of the discussions in the Working Group on the question of the convening of a high-level conference		4
	A. Draft comprehensive convention on international terrorism		4
	B. Question of the convening of a high-level conference		8

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I. Introduction

1. Pursuant to General Assembly resolution 59/46 of 2 December 2004 and upon the recommendation of the Ad Hoc Committee, the Sixth Committee decided, at its 1st meeting, on 3 October 2005, to establish a working group with a view to finalizing the draft comprehensive convention on international terrorism and to keep on its agenda the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations.

2. At the same meeting, the Sixth Committee elected Rohan Perera (Sri Lanka) as Chairman of the Working Group. The Committee also decided to open the Working Group to all States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency.

3. The Organization for the Prohibition of Chemical Weapons and the International Committee of the Red Cross attended the meeting of the Working Group as observers.

4. In keeping with its established practice, the Working Group decided that members of the Bureau of the Ad Hoc Committee would continue to act as Friends of the Chairman during the meetings of the Working Group. However, in view of the fact that Albert Hoffman (South Africa) was no longer available to serve in that capacity and in order to ensure the representation of all regional groups, the Working Group decided to invite Sabelo Sivuyile Maqungo (South Africa) to join the Friends of the Chairman. Thus, Carlos Fernando Díaz Paniagua (Costa Rica), Maria Telalian (Greece), Sabelo Sivuyile Maqungo (South Africa) and Lublin Dilja (Albania) served as Friends of the Chairman. The Working Group paid tribute to Mr. Hoffman for his valuable contribution to its work, particularly his leadership in coordinating and concluding the negotiations on the International Convention for the Suppression of Acts of Nuclear Terrorism.

5. The Working Group held three plenary meetings. It had before it the reports of the Ad Hoc Committee on its sixth[1] and ninth[2] sessions as well as the reports of the Working Group of the Sixth Committee convened during the fifty-third[3] and the fifty-fifth to fifty-ninth[4] sessions of the General Assembly. It also had before it (a) the letter dated 3 August 2005 from the Chairman of the Sixth Committee addressed to the President of the General Assembly (A/59/894), containing the report of the Coordinator on the results of the informal consultations on the draft comprehensive convention on international terrorism, held from 25 to 29 July 2005; (b) the letter dated 1 September 2005 from the Permanent Representative of Egypt to the United Nations addressed to the Secretary-General (A/60/329); (c) the letter dated 30 September 2005 from the Permanent Representative of Egypt to the United Nations addressed to the Chairman of the Sixth Committee (A/C.6/60/2); and (d) the letter dated 5 October 2005 from the Chairman of the Organization of the Islamic Conferences addressed to the Chairman of the Sixth Committee (A/C.6/60/3).

II. Proceedings of the Working Group

6. At its 1st meeting, on 10 October, the Working Group adopted its work programme and decided to proceed with discussions in informal consultations, which were conducted by the Chairman of the Working Group. The informal

consultations were held on 11 October. The Chairman, together with the Friends of the Chairman, also held wide-ranging bilateral contacts with interested delegations from 11 to 13 October.

7. Discussions focused on the outstanding issues concerning the draft comprehensive convention against international terrorism and on the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations.

8. At its 3rd meeting, on 14 October, the Working Group received reports on the results of the informal consultations and on the discussion in the Working Group on the question of convening a high-level conference. The reports of the Chairman are contained in the annex to the present report. Section A of the annex contains an informal summary of the results of the informal consultations on the draft comprehensive convention against international terrorism and section B of the annex contains an informal summary of discussions in the Working Group on the question of the convening of a high-level conference. These informal summaries are included, in accordance with the established practice for reference purposes only and not as a record of the discussions.

9. The Working Group considered and adopted its report at its 3rd meeting, on 14 October 2005.

Notes

[1] *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 37* (A/57/37 and Corr.1).

[2] Ibid., *Sixtieth Session, Supplement No. 37* (A/60/37).

[3] A/C.6/53/L.4.

[4] A/C.6/55/L.2, A/C.6/56/L.9, A/C.6/57/L.9, A/C.6/58/L.10 and A/C.6/59/L.10.

Annex

Informal summaries by the Chairman of the Working Group of the results of the informal consultations on the draft comprehensive convention and of the discussions in the Working Group on the question of the convening of a high-level conference

A. Draft comprehensive convention on international terrorism

1. On 11 October 2005, the Chairman conducted informal consultations on the outstanding issues of the draft comprehensive convention. The Chairman, together with the Friends of the Chairman, also held wide-ranging bilateral contacts with delegations on 11 to 13 October. The focus of the consultations was on a proposal regarding the preamble, the outstanding proposals regarding article 18[a] and the proposal made by Cuba to article 2, paragraph 4.[b]

New preambular paragraph

2. In introducing a non-paper for discussion on a new preambular paragraph, the Chairman indicated that it had emerged from the informal consultations, in the context of the Sixth Committee, held from 25 to 29 July 2005. The new preambular paragraph read as follows:

> "Reaffirming that in accordance with the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Declaration of Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, all peoples have the right to self-determination, freedom and independence, and that those peoples that have been forcibly deprived of its exercise have the right to struggle to that end, in conformity with the relevant principles of the Charter and of the above-mentioned Declaration,"

3. While some delegations saw no difficulty in reaffirming the right to self-determination in a preambular paragraph, they stated that such a paragraph should be seen as part of a package, which should include the former Coordinator's text of draft article 18, without any change. It was also noted that reference to "peoples" in draft article 18, paragraph 1, was an implicit reference to the right to self-determination, which would then be reaffirmed in the preamble, thus avoiding reopening discussions on draft article 18.

4. Some other delegations, while welcoming the idea of reaffirming the right to self-determination in the preamble, observed that such an approach did not add any value and would not address their concerns relating to draft article 18. It was stressed that the debate should focus on the outstanding issues which should be resolved in the context of that draft article and in that regard they reiterated their support for the text proposed by the Organization of the Islamic Conference (OIC) for draft article 18.

5. Other delegations found the proposal useful and suggested, in view of the importance that they attached to the issue, to move it to the operative part of the draft convention.

6. In commenting on the text of the proposed preambular paragraph, several delegations noted that there could be improvements in its formulation. In particular, it was pointed out that while the right to self-determination existed under international law, any formulation in the draft convention in that regard should refrain from creating new rights. It was suggested that a shorter preambular paragraph could limit itself to "reaffirming the right to self-determination of peoples in accordance with the Charter of the United Nations and the Declaration of Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations".

7. Some other delegations stressed the need to reflect properly the distinction between internal and external self-determination in the proposal. In this context, it was suggested to delete either the reference to the two Covenants, or, alternatively, the last part of the sentence, after the word "independence". Furthermore, concern was also expressed that the reference to "all peoples" was too broad and that the word "all" should be replaced by "those". It was also suggested that the proposal should refer to General Assembly resolution 1514 (XV).

8. Some other delegations expressed concern over the reference to the right to struggle in the exercise of the right to self-determination in that it might be construed as condoning certain terrorist acts. In response, however, it was pointed out that the right to self-determination was intertwined with the right to exercise it and that, therefore, the latter element was relevant to the discussion. It was also observed that peoples did not commit terrorist acts, only individuals and groups.

Draft article 18

9. Some delegations stressed that a solution to draft article 18 was crucial to resolving outstanding issues concerning the draft convention. Delegations reiterated their positions with regard to the text circulated by the former Coordinator and the text proposed by OIC, respectively.[a] These texts read as follows:

> "***Text circulated by the Coordinator for discussion***
>
> "1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States, peoples and individuals under international law, in particular the purposes and principles of the Charter of the United Nations, and international humanitarian law.
>
> "2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention.
>
> "3. The activities undertaken by the military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.
>
> "4. Nothing in this article condones or makes lawful otherwise unlawful acts, nor precludes prosecution under other laws.

"Text proposed by the Member States of the Organization of the Islamic Conference

"1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States, peoples and individuals under international law, in particular the purposes and principles of the Charter of the United Nations, and international humanitarian law.

"2. The activities of the parties during an armed conflict, including in situations of foreign occupation, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention.

"3. The activities undertaken by the military forces of a State in the exercise of their official duties, inasmuch as they are in conformity with international law, are not governed by this Convention.

"4. Nothing in this article condones or makes lawful otherwise unlawful acts, nor precludes prosecution under other laws."

10. Delegations expressing support for the text circulated by the former Coordinator pointed out that it was a compromise text which represented significant concessions. In particular, reference was made to the fact that the word "peoples" had been included in paragraph 1, to recognize the right to self-determination. According to their view, the former Coordinator's text offered legal precision, necessary for a criminal law instrument. In that context, the point was made that the term "armed forces" was unambiguous and well-defined in international humanitarian law.

11. Some other delegations reiterated their support for the OIC proposal and stressed that it constituted a compromise text which intended to create a balance between the different parties to an armed conflict and to properly distinguish activities in time of war and in time of peace. Noting also that compromises had been made by the sponsors of the OIC proposal, it was recalled that, initially, OIC had proposed an explicit exclusion of a wide range of situations to draft article 2 (A/C.6/55/WG.1/CRP.30) prior to making the current proposal (see A/C.6/55/L.2, annex III).

12. Some delegations expressed concern that the term "parties" used in the OIC text was ambiguous and would exclude a broad range of non-State actors from the scope of the draft convention. Such broad exemption carved out the possibility for providing a legal basis for certain terrorist acts, such as suicide bombings. Such a situation was in contrast to the Secretary-General's moral clarity call for a definition of terrorism that would include any action intended to cause death or serious bodily injury to civilians and non-combatants with the purpose of intimidating a population or compelling a Government or an international organization to do or to abstain from doing any act.

13. Some other delegations observed that the term "parties" was already used and recognized as such in the Geneva Conventions, in particular, in Additional Protocol I of 1977. Accordingly, it was suggested that, if necessary, the term "parties" could be defined in the draft convention. It was also emphasized that armed forces should not be given preferential treatment as compared with other subjects whose activities during armed conflict are governed by international humanitarian law. Furthermore,

these delegations also clarified that the OIC text did not exempt, and should not be interpreted as exempting acts targeting civilians from the scope of the draft convention, including suicide bombings. In any circumstance, the targeting of civilians would be prosecuted either under the draft convention or under international humanitarian law, and such an understanding could be made explicit if necessary.

14. With regard to the reference to foreign occupation in the OIC text, it was observed that, pursuant to article 1, paragraph 4, of the 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), acts of armed forces during an armed conflict included situations of foreign occupation and that, therefore, such reference in the OIC text was superfluous. Other delegations took a narrower view and expressed concern that a reference to foreign occupation in draft article 18 could imply that such situations were excluded from the scope of the draft convention. On the other hand, some delegations noted that since situations of foreign occupation were already governed by international humanitarian law, the OIC text presented the correct legal position. In that regard, a point was made that it was necessary to clearly demarcate the two situations, namely situations in which the convention would apply and in which international humanitarian law would apply.

15. In response to a concern that the former Coordinator's text would exclude all activities of armed forces from the draft convention, it was clarified that only those activities already governed by international humanitarian law were exempted. In that context, the question was raised whether delegations would accept the principle that all acts governed by international humanitarian law should be excluded from the scope of the draft convention. While several delegations expressed support for that approach, other delegations commented that a thorough consideration of all aspects of the question was required.

16. In an effort to bridge the difference between the two positions, a suggestion was also made to delete paragraphs 2 and 3 entirely.

17. During the bilateral contacts some delegations expressed their readiness to explore other possibilities of reaching agreement on the outstanding issues, particularly in the context of draft article 18. Indeed, some delegations suggested specific ways in which this could be done, either by replacing particular paragraphs of draft article 18 or by adding additional paragraphs to clarify further the relationship between the present draft convention and international humanitarian law. The importance of not criminalizing acts which are governed by international humanitarian law and not prohibited by that law was also stressed. Some delegations encouraged the Chairman and the Friends of the Chairman to consider presenting texts that might help to advance the process.

Proposal relating to draft article 2, paragraph 4

18. With respect to the proposal by Cuba for the inclusion of a new paragraph 4 (d) in draft article 2,[b] the sponsor delegation noted that it was intended to cover acts by those in a position of control of the armed forces of a State. It was important for the international community to stress that such persons did not have a blank cheque to commit terrorist acts. The text, read as follows:

"Being in a position to control or direct effectively the actions of troops belonging to the armed forces of the State, orders, permits, or actively participates in the planning, preparation, initiation or execution of any of the offences set forth in paragraphs 1, 2 or 3 of the present article, in a manner incompatible with international law, including the Charter of the United Nations."

19. Some delegations expressed their support for the proposal, noting that it would fill a gap in the current text of draft article 2. Such a proposal was in line with the effort to elaborate a truly comprehensive convention. Some delegations observed that the proposal would be applicable only in situations not covered by international humanitarian law.

20. It was suggested that the provision be broadened to include all aspects of command responsibility under international criminal law.

21. Some other delegations indicated that they had difficulty with the inclusion of the new paragraph 4 (d) as proposed by Cuba. In the first place, the proposal was already covered by the provisions of the draft articles 2 and 18, paragraph 4. Moreover, according to the delegations the provision seemed to go in the direction of establishing a concept of State criminality, and covered issues already regulated by other fields of international law, including international humanitarian law. It was also noted that the proposal would have the effect of shifting the debate from draft article 18 to draft article 2, thereby reopening issues, which would be a setback to the negotiation process. It was further pointed out that, as drafted, the proposal created an ambiguity by specifying that it applied to terrorist offences perpetrated "in a manner inconsistent with international law", thereby conveying the impression that certain offences covered under the convention would not otherwise be inconsistent with international law.

22. In reply, the sponsor delegation explained that its proposal was not aimed at criminalizing acts of States, but those of individuals who were in charge of armed forces of States. Moreover, to the extent that elements of the proposal were already covered by draft articles 2 and 18, it would be beneficial to clarify the matter in the text of the convention. The degree of detail would be important in that regard.

23. During the bilateral contacts, several delegations expressed reservations regarding the possibility of reopening the consideration of draft article 2.

B. Question of the convening of a high-level conference

24. The Working Group considered the question of the convening of a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations, as mandated by the General Assembly in resolution 59/46, against the background of the proposal for the convening of a special session of the General Assembly to examine and adopt an action plan for cooperation against terrorism at its 2nd meeting, on 12 October 2005.

25. The sponsor delegation stated that Egypt had initially proposed the convening of a high-level conference in 1986, and that the item had been introduced in the Sixth Committee in 1999. In the light of the recent developments and the dramatic increase of terrorist incidents throughout the world, intensification of the counter-

terrorism measures with the United Nations had become a priority. Despite measures adopted at the national and regional levels and by the United Nations, there was still a need to adopt an action plan within the United Nations to cover both legal and procedural aspects of cooperation to eliminate terrorism. The proposed action plan, which would be adopted at a high-level special session of the General Assembly, should focus on delivering a political message demonstrating the solidarity and unity of the States Members of the United Nations against terrorism, on enhancing international cooperation, especially by increasing coordination between States and the United Nations on combating terrorism, and on arriving at an agreement on the main elements to be included in an international plan of action against terrorism.

26. In their comments, some delegations expressed support for the proposal. The working paper submitted by Egypt was considered to be a good basis for discussion. The view was expressed that the convening of such a conference was timely, as it was called for in the 2005 World Summit Outcome. It could also send a strong message demonstrating the resolute will and unity of the international community in the fight against terrorism. It was pointed out that the United Nations had multifaceted functions, and should not be limited to addressing the legal aspects of terrorism only, but should consider practical aspects of combating terrorism as well. Concerning the mandate of the conference, a number of additional ideas were offered, including on the need for a definition of terrorism in all its forms and manifestations, the importance of implementing existing international agreements against international terrorism, and the need to tackle other crimes that were linked with terrorism, such as drug trafficking and money-laundering.

27. Some other delegations, on the other hand, expressed their doubts about the convening of such a conference and sought clarifications on its timing, agenda and outcome. In particular, clarifications were sought regarding, inter alia, whether the recent proposal of Egypt on the convening of a special session of the General Assembly was a replacement of its previous proposal on the convening of a high-level conference or was an additional proposal; whether the proposed conference was envisaged to be convened before or after the adoption of the draft comprehensive convention; and whether preparatory work would begin in parallel with the continued negotiations on the finalization of the draft comprehensive convention.

28. It was further observed that, in accordance with the 2005 World Summit Outcome, the General Assembly should accord priority to the finalization and adoption of the draft comprehensive convention. The political message on condemnation of terrorism in all its forms and manifestations had already been conveyed through the 2005 World Summit Outcome, and the convening of the proposed conference should be addressed after the completion of the work on the draft comprehensive convention. It was stated that careful preparatory work was required in advance of the convening of the proposed conference, to ensure its success. Preparatory work would be needed to achieve results that demonstrate unity and not division in the fight against terrorism. The view was also expressed that in the preparation for such an event care should be taken to avoid duplication. It was noted that the preparation of a strategy on combating terrorism is currently being undertaken under the leadership of the President of the General Assembly, following the mandate received from the 2005 World Summit Outcome.

29. Concerning the proposed topics for discussion in the working paper submitted by the sponsor delegation (A/C.6/60/2, annex), the view was expressed that, in the event of the convening of such a conference, any preparatory work should address only the operational and implementation aspects indicated in the working paper. The political aspects of the working paper were adequately covered by the existing instruments.

30. In response to the queries, the sponsor delegation stated that it had originally proposed the convening of a high-level conference, but considering the recent developments his delegation was inclined to opt for the convening of a high-level special session of the General Assembly since it was a more practical way of addressing the matter. Concerning the timing, the sponsor delegation agreed that priority should be given to the finalization of the draft comprehensive convention. However, there should not be a linkage between the conclusion of the draft comprehensive convention and the convening of such a conference. Nevertheless, the preparatory work on the conference could start alongside such negotiations. As regards the aim of the event, he observed that in the ongoing efforts to combat terrorism close coordination between States and the United Nations was essential. The aim would be to demonstrate the unity and solidarity of the international community on the question.

Notes

[a] *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 37* (A/57/37), annex IV.

[b] Ibid., *Sixtieth Session, Supplement No. 37* (A/60/37), annex IIIA.

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Report of the United Nations Commission on International Trade Law on the work of its thirty-eighth session

Algeria, Argentina, Australia, Austria, Belarus, Belgium, Belize, Brazil, Bulgaria, Canada, Chile, China, Colombia, Cyprus, Czech Republic, Democratic Republic of the Congo, Denmark, Ecuador, Estonia, Ethiopia, Fiji, Finland, France, Germany, Greece, Guatemala, Haiti, Hungary, India, Iran (Islamic Republic of), Ireland, Israel, Italy, Japan, Jordan, Kenya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malaysia, Mexico, Mongolia, Morocco, Netherlands, New Zealand, Norway, Philippines, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Serbia and Montenegro, Sierra Leone, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Thailand, the former Yugoslav Republic of Macedonia, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland and Uruguay: draft resolution

Report of the United Nations Commission on International Trade Law on the work of its thirty-eighth session

The General Assembly,

Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law with a mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Reaffirming its belief that the progressive modernization and harmonization of international trade law, in reducing or removing legal obstacles to the flow of international trade, especially those affecting the developing countries, would contribute significantly to universal economic cooperation among all States on a basis of equality, equity and common interest and to the elimination of discrimination in international trade and, thereby, to the well-being of all peoples,

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Having considered the report of the Commission on the work of its thirty-eighth session,[1]

Reiterating its concern that activities undertaken by other bodies in the field of international trade law without adequate coordination with the Commission might lead to undesirable duplication of efforts and would not be in keeping with the aim of promoting efficiency, consistency and coherence in the unification and harmonization of international trade law,

Reaffirming the mandate of the Commission, as the core legal body within the United Nations system in the field of international trade law, to coordinate legal activities in this field, in particular to avoid duplication of efforts, including among organizations formulating rules of international trade, and to promote efficiency, consistency and coherence in the modernization and harmonization of international trade law, and to continue, through its secretariat, to maintain close cooperation with other international organs and organizations, including regional organizations, active in the field of international trade law,

1. *Takes note with appreciation* of the report of the United Nations Commission on International Trade Law on the work of its thirty-eighth session;[1]

2. *Commends* the Commission for the finalization and approval of a draft convention on the use of electronic communications in international contracts;[2]

3. *Also commends* the Commission for the progress made in its work on a revision of its Model Law on Procurement of Goods, Construction and Services,[3] on model legislative provisions on interim measures in international commercial arbitration, on a draft instrument on transport law and on a draft legislative guide on secured transactions;

4. *Endorses* the efforts and initiatives of the Commission, as the core legal body within the United Nations system in the field of international trade law, aimed at increasing coordination of and cooperation on legal activities of international and regional organizations active in the field of international trade law, and in this regard appeals to relevant international and regional organizations to coordinate their legal activities with those of the Commission, to avoid duplication of efforts and to promote efficiency, consistency and coherence in the modernization and harmonization of international trade law;

5. *Reaffirms* the importance, in particular for developing countries, of the work of the Commission concerned with technical assistance in the field of international trade law reform and development, and in this connection:

(a) Welcomes the Commission's initiatives towards expanding, through its secretariat, its technical assistance programme;

(b) Expresses its appreciation to the Commission for carrying out technical assistance activities in Azerbaijan, Brazil, China, Ethiopia (for the Common Market for Eastern and Southern Africa), Serbia and Montenegro, Slovenia, South Africa (for the Association of Law Reform Agencies of Eastern and Southern Africa) and Thailand;

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[1] *Official Records of the General Assembly, Sixtieth Session, Supplement No. 17* (A/60/17).

[2] Ibid., chapter III and annex I.

[3] Ibid., *Forty-ninth Session, Supplement No. 17* and corrigendum (A/49/17 and Corr.1), annex I.

(c) Expresses its appreciation to the Governments whose contributions enabled the seminars and briefing missions to take place, and appeals to Governments, the relevant bodies of the United Nations system, organizations, institutions and individuals to make voluntary contributions to the United Nations Commission on International Trade Law Trust Fund for Symposia and, where appropriate, to the financing of special projects, and otherwise to assist the secretariat of the Commission in carrying out technical assistance activities, in particular in developing countries;

(d) Reiterates its appeal to the United Nations Development Programme and other bodies responsible for development assistance, such as the World Bank and regional development banks, as well as to Governments in their bilateral aid programmes, to support the technical assistance programme of the Commission and to cooperate and coordinate their activities with those of the Commission;

6. *Takes note with regret* that, since the previous session of the Commission, no contributions have been made to the trust fund established to provide travel assistance to developing countries that are members of the Commission, at their request and in consultation with the Secretary-General, stresses the need for contributions to the trust fund in order to increase expert representation from developing countries at sessions of the Commission and its working groups, and reiterates its appeal to Governments, the relevant bodies of the United Nations system, organizations, institutions and individuals to make voluntary contributions to the trust fund;

7. *Decides*, in order to ensure full participation by all Member States in the sessions of the Commission and its working groups, to continue, in the competent Main Committee during the sixtieth session of the General Assembly, its consideration of granting travel assistance to the least developed countries that are members of the Commission, at their request and in consultation with the Secretary-General;

8. *Recalls* that the responsibility for the work of the Commission lies with the meetings of the Commission and its intergovernmental working groups, and stresses in this regard that information should be provided regarding meetings of experts, which bring an essential contribution to the work of the Commission;

9. *Recalls* its resolutions on partnerships between the United Nations and non-State actors, in particular the private sector,[4] and in this regard encourages the Commission to further explore different approaches to the use of partnerships with non-State actors in the implementation of its mandate, in particular in the area of technical assistance, in accordance with the applicable principles and guidelines and in cooperation and coordination with other relevant offices of the Secretariat, including the Global Compact Office;

10. *Reiterates its request* that the Secretary-General, in conformity with the General Assembly resolutions on documentation-related matters, which, in particular, emphasize that any reduction in the length of documents should not adversely affect either the quality of the presentation or the substance of the documents,[5] bear in mind the particular characteristics of the mandate and work of

[4] Resolutions 55/215, 56/76 and 58/129.

[5] Resolutions 52/214, section B, para. 5, 57/283 B, section III, para. 29, and 58/250, section III, paras. 2 and 17.

the Commission in implementing page limits with respect to the documentation of the Commission;

11. *Also requests* the Secretary-General to continue providing summary records of the Commission's meetings relating to the formulation of normative texts;

12. *Stresses* the importance of bringing into effect the conventions emanating from the work of the Commission for the global unification and harmonization of international trade law, and, to this end, urges States that have not yet done so to consider signing, ratifying or acceding to those conventions;

13. *Takes note with appreciation* of the preparation of digests of case law relating to the Commission's texts, in particular a digest of case law relating to the United Nations Convention on Contracts for the International Sale of Goods[6] and a digest of case law relating to the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law,[7] which will assist in dissemination of information on those texts and promote their use, enactment and uniform interpretation;

14. *Welcomes* the Commission's decision to hold, in the context of its fortieth session in 2007, a congress on international trade law in Vienna, with a view to reviewing the results of the past work of the Commission as well as related work of other organizations active in the field of international trade law, assessing current work programmes and considering topics and areas for future work, and acknowledges the importance of holding such a congress for the coordination and promotion of activities aimed at the modernization and harmonization of international trade law;

15. *Notes* that 2006 will mark the thirtieth anniversary of the adoption by the Commission of the Arbitration Rules of the United Nations Commission on International Trade Law,[8] used worldwide in the settlement of disputes concerning international trade and investment, and in this regard welcomes initiatives being undertaken to organize conferences and other similar events to provide a forum for assessing the experience with the Rules, as well as discussing their possible revision;

16. *Recalling* its resolutions affirming the importance of high-quality, user-friendly and cost-effective United Nations websites and the need for their multilingual development, maintenance and enrichment,[9] commends the Commission's restructured website in the six official languages of the United Nations, and welcomes the continuous efforts of the Commission to maintain and improve its website in accordance with the applicable guidelines.

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[6] United Nations, *Treaty Series*, vol. 1489, No. 25567.

[7] *Official Records of the General Assembly, Fortieth Session, Supplement No. 17* (A/40/17), annex I.

[8] United Nations publication, Sales No. E.77.V.6.

[9] Resolutions 52/214, section C, para. 3, 55/222, section III, para. 12, 56/64 B, section X, 57/130 B, section X, 58/101 B, section V, paras. 61-76, and 59/126 B, section V, paras. 76-95.

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Draft resolution

United Nations Convention on the Use of Electronic Communications in International Contracts

The General Assembly,

Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law with a mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Considering that problems created by uncertainties as to the legal value of electronic communications exchanged in the context of international contracts constitute an obstacle to international trade,

Convinced that the adoption of uniform rules to remove obstacles to the use of electronic communications in international contracts, including obstacles that might result from the operation of existing international trade law instruments, would enhance legal certainty and commercial predictability for international contracts and may help States gain access to modern trade routes,

Recalling that, at its thirty-fourth session, in 2001, the Commission decided to prepare an international instrument dealing with issues of electronic contracting, which should also aim at removing obstacles to electronic commerce in existing uniform law conventions and trade agreements, and entrusted its Working Group IV (Electronic Commerce) with the preparation of a draft,[1]

[1] *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 17* and corrigenda (A/56/17 and Corr.1-3), paras. 291-295.

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Noting that the Working Group devoted six sessions, from 2002 to 2004, to the preparation of the draft Convention on the Use of Electronic Communications in International Contracts, and that the Commission considered the draft Convention at its thirty-eighth session in 2005,[2]

Being aware that all States and interested international organizations were invited to participate in the preparation of the draft Convention at all the sessions of the Working Group and at the thirty-eighth session of the Commission, either as members or as observers, with a full opportunity to speak and make proposals,

Noting with satisfaction that the text of the draft Convention was circulated for comments before the thirty-eighth session of the Commission to all Governments and international organizations invited to attend the meetings of the Commission and the Working Group as observers, and that the comments received were before the Commission at its thirty-eighth session,[3]

Taking note with satisfaction of the decision of the Commission at its thirty-eighth session to submit the draft Convention to the General Assembly for its consideration,[4]

Taking note of the draft Convention approved by the Commission,[5]

1. *Expresses its appreciation* to the United Nations Commission on International Trade Law for preparing the draft Convention on the Use of Electronic Communications in International Contracts;[5]

2. *Adopts* the United Nations Convention on the Use of Electronic Communications in International Contracts, which is contained in the annex to the present resolution, and requests the Secretary-General to open it for signature;

3. *Calls upon* all Governments to consider becoming party to the Convention.

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[2] Ibid., *Sixtieth Session, Supplement No. 17* (A/60/17), chapter III.

[3] A/CN.9/578 and Add.1-17.

[4] *Official Records of the General Assembly, Sixtieth Session, Supplement No. 17* (A/60/17), para. 167.

[5] Ibid., annex I.

Annex

United Nations Convention on the Use of Electronic Communications in International Contracts

The States Parties to this Convention,

Reaffirming their belief that international trade on the basis of equality and mutual benefit is an important element in promoting friendly relations among States,

Noting that the increased use of electronic communications improves the efficiency of commercial activities, enhances trade connections and allows new access opportunities for previously remote parties and markets, thus playing a fundamental role in promoting trade and economic development, both domestically and internationally,

Considering that problems created by uncertainty as to the legal value of the use of electronic communications in international contracts constitute an obstacle to international trade,

Convinced that the adoption of uniform rules to remove obstacles to the use of electronic communications in international contracts, including obstacles that might result from the operation of existing international trade law instruments, would enhance legal certainty and commercial predictability for international contracts and help States gain access to modern trade routes,

Being of the opinion that uniform rules should respect the freedom of parties to choose appropriate media and technologies, taking account of the principles of technological neutrality and functional equivalence, to the extent that the means chosen by the parties comply with the purpose of the relevant rules of law,

Desiring to provide a common solution to remove legal obstacles to the use of electronic communications in a manner acceptable to States with different legal, social and economic systems,

Have agreed as follows:

Chapter I
Sphere of application

Article 1
Scope of application

1. This Convention applies to the use of electronic communications in connection with the formation or performance of a contract between parties whose places of business are in different States.

2. The fact that the parties have their places of business in different States is to be disregarded whenever this fact does not appear either from the contract or from any dealings between the parties or from information disclosed by the parties at any time before or at the conclusion of the contract.

3. Neither the nationality of the parties nor the civil or commercial character of the parties or of the contract is to be taken into consideration in determining the application of this Convention.

Article 2
Exclusions

1. This Convention does not apply to electronic communications relating to any of the following:

(a) Contracts concluded for personal, family or household purposes;

(b) (i) Transactions on a regulated exchange; (ii) foreign exchange transactions; (iii) inter-bank payment systems, inter-bank payment agreements or clearance and settlement systems relating to securities or other financial assets or instruments; (iv) the transfer of security rights in sale, loan or holding of or agreement to repurchase securities or other financial assets or instruments held with an intermediary.

2. This Convention does not apply to bills of exchange, promissory notes, consignment notes, bills of lading, warehouse receipts or any transferable document or instrument that entitles the bearer or beneficiary to claim the delivery of goods or the payment of a sum of money.

Article 3
Party autonomy

The parties may exclude the application of this Convention or derogate from or vary the effect of any of its provisions.

Chapter II
General provisions

Article 4
Definitions

For the purposes of this Convention:

(a) "Communication" means any statement, declaration, demand, notice or request, including an offer and the acceptance of an offer, that the parties are required to make or choose to make in connection with the formation or performance of a contract;

(b) "Electronic communication" means any communication that the parties make by means of data messages;

(c) "Data message" means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy;

(d) "Originator" of an electronic communication means a party by whom, or on whose behalf, the electronic communication has been sent or generated prior to storage, if any, but it does not include a party acting as an intermediary with respect to that electronic communication;

(e) "Addressee" of an electronic communication means a party who is intended by the originator to receive the electronic communication, but does not include a party acting as an intermediary with respect to that electronic communication;

(f) "Information system" means a system for generating, sending, receiving, storing or otherwise processing data messages;

(g) "Automated message system" means a computer program or an electronic or other automated means used to initiate an action or respond to data messages or performances in whole or in part, without review or intervention by a natural person each time an action is initiated or a response is generated by the system;

(h) "Place of business" means any place where a party maintains a non-transitory establishment to pursue an economic activity other than the temporary provision of goods or services out of a specific location.

Article 5
Interpretation

1. In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.

2. Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.

Article 6
Location of the parties

1. For the purposes of this Convention, a party's place of business is presumed to be the location indicated by that party, unless another party demonstrates that the party making the indication does not have a place of business at that location.

2. If a party has not indicated a place of business and has more than one place of business, then the place of business for the purposes of this Convention is that which has the closest relationship to the relevant contract, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract.

3. If a natural person does not have a place of business, reference is to be made to the person's habitual residence.

4. A location is not a place of business merely because that is: (a) where equipment and technology supporting an information system used by a party in connection with the formation of a contract are located; or (b) where the information system may be accessed by other parties.

5. The sole fact that a party makes use of a domain name or electronic mail address connected to a specific country does not create a presumption that its place of business is located in that country.

Article 7
Information requirements

Nothing in this Convention affects the application of any rule of law that may require the parties to disclose their identities, places of business or other information, or relieves a party from the legal consequences of making inaccurate, incomplete or false statements in that regard.

Chapter III
Use of electronic communications in international contracts

Article 8
Legal recognition of electronic communications

1. A communication or a contract shall not be denied validity or enforceability on the sole ground that it is in the form of an electronic communication.

2. Nothing in this Convention requires a party to use or accept electronic communications, but a party's agreement to do so may be inferred from the party's conduct.

Article 9
Form requirements

1. Nothing in this Convention requires a communication or a contract to be made or evidenced in any particular form.

2. Where the law requires that a communication or a contract should be in writing, or provides consequences for the absence of a writing, that requirement is met by an electronic communication if the information contained therein is accessible so as to be usable for subsequent reference.

3. Where the law requires that a communication or a contract should be signed by a party, or provides consequences for the absence of a signature, that requirement is met in relation to an electronic communication if:

(a) A method is used to identify the party and to indicate that party's intention in respect of the information contained in the electronic communication; and

(b) The method used is either:

(i) As reliable as appropriate for the purpose for which the electronic communication was generated or communicated, in the light of all the circumstances, including any relevant agreement; or

(ii) Proven in fact to have fulfilled the functions described in subparagraph (a) above, by itself or together with further evidence.

4. Where the law requires that a communication or a contract should be made available or retained in its original form, or provides consequences for the absence of an original, that requirement is met in relation to an electronic communication if:

(a) There exists a reliable assurance as to the integrity of the information it contains from the time when it was first generated in its final form, as an electronic communication or otherwise; and

(b) Where it is required that the information it contains be made available, that information is capable of being displayed to the person to whom it is to be made available.

5. For the purposes of paragraph 4 (a):

(a) The criteria for assessing integrity shall be whether the information has remained complete and unaltered, apart from the addition of any endorsement and any change that arises in the normal course of communication, storage and display; and

(b) The standard of reliability required shall be assessed in the light of the purpose for which the information was generated and in the light of all the relevant circumstances.

Article 10
Time and place of dispatch and receipt of electronic communications

1. The time of dispatch of an electronic communication is the time when it leaves an information system under the control of the originator or of the party who sent it on behalf of the originator or, if the electronic communication has not left an information system under the control of the originator or of the party who sent it on behalf of the originator, the time when the electronic communication is received.

2. The time of receipt of an electronic communication is the time when it becomes capable of being retrieved by the addressee at an electronic address designated by the addressee. The time of receipt of an electronic communication at another electronic address of the addressee is the time when it becomes capable of being retrieved by the addressee at that address and the addressee becomes aware that the electronic communication has been sent to that address. An electronic communication is presumed to be capable of being retrieved by the addressee when it reaches the addressee's electronic address.

3. An electronic communication is deemed to be dispatched at the place where the originator has its place of business and is deemed to be received at the place where the addressee has its place of business, as determined in accordance with article 6.

4. Paragraph 2 of this article applies notwithstanding that the place where the information system supporting an electronic address is located may be different from the place where the electronic communication is deemed to be received under paragraph 3 of this article.

Article 11
Invitations to make offers

A proposal to conclude a contract made through one or more electronic communications which is not addressed to one or more specific parties, but is generally accessible to parties making use of information systems, including proposals that make use of interactive applications for the placement of orders through such information systems, is to be considered as an invitation to make

offers, unless it clearly indicates the intention of the party making the proposal to be bound in case of acceptance.

Article 12
Use of automated message systems for contract formation

A contract formed by the interaction of an automated message system and a natural person, or by the interaction of automated message systems, shall not be denied validity or enforceability on the sole ground that no natural person reviewed or intervened in each of the individual actions carried out by the automated message systems or the resulting contract.

Article 13
Availability of contract terms

Nothing in this Convention affects the application of any rule of law that may require a party that negotiates some or all of the terms of a contract through the exchange of electronic communications to make available to the other party those electronic communications which contain the contractual terms in a particular manner, or relieves a party from the legal consequences of its failure to do so.

Article 14
Error in electronic communications

1. Where a natural person makes an input error in an electronic communication exchanged with the automated message system of another party and the automated message system does not provide the person with an opportunity to correct the error, that person, or the party on whose behalf that person was acting, has the right to withdraw the portion of the electronic communication in which the input error was made if:

(a) The person, or the party on whose behalf that person was acting, notifies the other party of the error as soon as possible after having learned of the error and indicates that he or she made an error in the electronic communication; and

(b) The person, or the party on whose behalf that person was acting, has not used or received any material benefit or value from the goods or services, if any, received from the other party.

2. Nothing in this article affects the application of any rule of law that may govern the consequences of any error other than as provided for in paragraph 1.

Chapter IV
Final provisions

Article 15
Depositary

The Secretary-General of the United Nations is hereby designated as the depositary for this Convention.

Article 16
Signature, ratification, acceptance or approval

1. This Convention is open for signature by all States at United Nations Headquarters in New York from [...] 2005 to [...] 2007.

2. This Convention is subject to ratification, acceptance or approval by the signatory States.

3. This Convention is open for accession by all States that are not signatory States as from the date it is open for signature.

4. Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary General of the United Nations.

Article 17
Participation by regional economic integration organizations

1. A regional economic integration organization that is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, ratify, accept, approve or accede to this Convention. The regional economic integration organization shall in that case have the rights and obligations of a Contracting State, to the extent that that organization has competence over matters governed by this Convention. Where the number of Contracting States is relevant in this Convention, the regional economic integration organization shall not count as a Contracting State in addition to its member States that are Contracting States.

2. The regional economic integration organization shall, at the time of signature, ratification, acceptance, approval or accession, make a declaration to the depositary specifying the matters governed by this Convention in respect of which competence has been transferred to that organization by its member States. The regional economic integration organization shall promptly notify the depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

3. Any reference to a "Contracting State" or "Contracting States" in this Convention applies equally to a regional economic integration organization where the context so requires.

4. This Convention shall not prevail over any conflicting rules of any regional economic integration organization as applicable to parties whose respective places of business are located in States members of any such organization, as set out by declaration made in accordance with article 21.

Article 18
Effect in domestic territorial units

1. If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.

2. These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.

3. If, by virtue of a declaration under this article, this Convention extends to one or more but not all of the territorial units of a Contracting State, and if the place of business of a party is located in that State, this place of business, for the purposes of this Convention, is considered not to be in a Contracting State, unless it is in a territorial unit to which the Convention extends.

4. If a Contracting State makes no declaration under paragraph 1 of this article, the Convention is to extend to all territorial units of that State.

Article 19
Declarations on the scope of application

1. Any Contracting State may declare, in accordance with article 21, that it will apply this Convention only:

(a) When the States referred to in article 1, paragraph 1, are Contracting States to this Convention; or

(b) When the parties have agreed that it applies.

2. Any Contracting State may exclude from the scope of application of this Convention the matters it specifies in a declaration made in accordance with article 21.

Article 20
Communications exchanged under other international conventions

1. The provisions of this Convention apply to the use of electronic communications in connection with the formation or performance of a contract to which any of the following international conventions, to which a Contracting State to this Convention is or may become a Contracting State, apply:

Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958);

Convention on the Limitation Period in the International Sale of Goods (New York, 14 June 1974) and Protocol thereto (Vienna, 11 April 1980);

United Nations Convention on Contracts for the International Sale of Goods (Vienna, 11 April 1980);

United Nations Convention on the Liability of Operators of Transport Terminals in International Trade (Vienna, 19 April 1991);

United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (New York, 11 December 1995);

United Nations Convention on the Assignment of Receivables in International Trade (New York, 12 December 2001).

2. The provisions of this Convention apply further to electronic communications in connection with the formation or performance of a contract to which another international convention, treaty or agreement not specifically referred to in paragraph 1 of this article, and to which a Contracting State to this Convention

is or may become a Contracting State, applies, unless the State has declared, in accordance with article 21, that it will not be bound by this paragraph.

3. A State that makes a declaration pursuant to paragraph 2 of this article may also declare that it will nevertheless apply the provisions of this Convention to the use of electronic communications in connection with the formation or performance of any contract to which a specified international convention, treaty or agreement applies to which the State is or may become a Contracting State.

4. Any State may declare that it will not apply the provisions of this Convention to the use of electronic communications in connection with the formation or performance of a contract to which any international convention, treaty or agreement specified in that State's declaration, to which the State is or may become a Contracting State, applies, including any of the conventions referred to in paragraph 1 of this article, even if such State has not excluded the application of paragraph 2 of this article by a declaration made in accordance with article 21.

Article 21
Procedure and effects of declarations

1. Declarations under article 17, paragraph 4, article 19, paragraphs 1 and 2, and article 20, paragraphs 2, 3 and 4, may be made at any time. Declarations made at the time of signature are subject to confirmation upon ratification, acceptance or approval.

2. Declarations and their confirmations are to be in writing and to be formally notified to the depositary.

3. A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary.

4. Any State that makes a declaration under this Convention may modify or withdraw it at any time by a formal notification in writing addressed to the depositary. The modification or withdrawal is to take effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.

Article 22
Reservations

No reservations may be made under this Convention.

Article 23
Entry into force

1. This Convention enters into force on the first day of the month following the expiration of six months after the date of deposit of the third instrument of ratification, acceptance, approval or accession.

2. When a State ratifies, accepts, approves or accedes to this Convention after the deposit of the third instrument of ratification, acceptance, approval or accession, this Convention enters into force in respect of that State on the first day

of the month following the expiration of six months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

Article 24
Time of application

This Convention and any declaration apply only to electronic communications that are made after the date when the Convention or the declaration enters into force or takes effect in respect of each Contracting State.

Article 25
Denunciations

1. A Contracting State may denounce this Convention by a formal notification in writing addressed to the depositary.

2. The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

DONE at New York, this [...] day of [...], 2005, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed this Convention.